

ESTTA Tracking number: **ESTTA463226**Filing date: **03/22/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following parties request to cancel indicated registration.

**Petitioner Information**

Name	Tee and Ell Weight Lifting and Exercise Enterprises, Inc.		
Entity	Corporation	Citizenship	Ohio
Address	3884 Larchmere Drive Grove City, OH 43123 UNITED STATES		

Name	Mr. Louis J. Simmons		
Entity	Individual	Citizenship	UNITED STATES
Address	3884 Larchmere Drive Grove City, OH 43123 UNITED STATES		

Attorney information	Michel J. Gallagher, David J. Dawsey Gallagher & Dawsey Co., LPA P. O. Box 785 Columbus, OH 43216 UNITED STATES mgallagher@invention-protection.com Phone:6142286280
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**Registration Subject to Cancellation**

Registration No	4001078	Registration date	07/26/2011
Registrant	Paul Thomas 13782 Hollowgreen Dr. Houston, TX 77082 UNITED STATES		

**Goods/Services Subject to Cancellation**


Class 041. First Use: 2005/00/00 First Use In Commerce: 2006/00/00 All goods and services in the class are cancelled, namely: martial arts instruction; physical fitness instruction
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
Dilution	Trademark Act section 43(c)

Related Proceedings	U.S. Trademark Application No. 85474170
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## Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2935689	Application Date	09/06/2002
Registration Date	03/29/2005	Foreign Priority Date	NONE
Word Mark	WESTSIDE BARBELL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1992/11/16 First Use In Commerce: 1992/11/16 Prerecorded video tapes featuring instruction and training in the field of weightlifting		

Attachments	76447366#TMSN.gif ( 1 page )( bytes ) 20120322 Petition for Cancellation.pdf ( 7 pages )(20487 bytes ) EXHIBIT A (Registration 2935689).pdf ( 2 pages )(386360 bytes ) EXHIBIT B (TESS Summary Appl. No. 85474170).pdf ( 2 pages )(122973 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael J. Gallagher/
Name	Michel J. Gallagher, David J. Dawsey
Date	03/22/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF: TRADEMARK REGISTRATION NO. 4001078 – WEST SIDE MIXED  
MARTIAL ARTS

DATE OF REGISTRATION: July 26, 2011

**TEE AND ELL WEIGHT LIFTING AND  
EXERCISE ENTERPRISES, INC. d/b/a/  
WESTSIDE BARBELL and  
LOUIS J. SIMMONS**

**Petitioners,**

**v.**

**PAUL THOMAS, d/b/a WEST SIDE  
MIXED MARTIAL ARTS,**

**Respondent**

**Cancellation Proceeding No. :**  
\_\_\_\_\_

**PETITION FOR CANCELLATION PURSUANT TO 15 U.S.C. §1064**

Petitioner, Tee And Ell Weight Lifting and Exercise Enterprises, Inc. d/b/a Westside Barbell, is an Ohio corporation, having a principal place of business at 3884 Larchmere Drive, Grove City, Ohio 43123 and Petitioner Louis J. Simmons is an individual having a principal place of business at 3884 Larchmere Drive, Grove City, Ohio 43123 (hereafter “Petitioners”). Petitioners believe that they are being damaged by the use and registration of the WEST SIDE MIXED MARTIAL ARTS mark shown in Registration 4001078 by Paul Thomas, d/b/a West Side Mixed Martial Arts, (hereafter “Respondent”) for:

Martial arts instruction; physical fitness instruction in International Class 041.

Petitioners hereby petition for the cancellation of Respondent's WEST SIDE MIXED MARTIAL ARTS mark under the provisions of Section 14 of the Trademark Act of July 5, 1946 (the "Lanham Act"), 15 U.S.C. § 1064.

The subject registration ("Registration") was filed on June 16, 2010, under Section 1(a) of the Trademark Act (15 U.S.C. § 1051(a)), and registered on July 26, 2011.

As grounds for cancellation, it is alleged that:

1. Petitioners are the owners of the entire right, title and interest in and to the federally-registered WESTSIDE BARBELL trademark, Registration No. 2935689 filed on September 6, 2002, and registered on March 29, 2005, for:

Prerecorded video tapes featuring instruction and training in the field of weightlifting, in International Class 009.

A copy of Registration No. 2935689 is attached to this Petition for Cancellation as Exhibit A.

2. Petitioners are the owners of the entire right, title and interest in and to the federally-filed Trademark Application 85474170 for the mark WESTSIDE 4 ATHLETES, filed November 16, 2011 under Section 1(b) of the Trademark Act (15 U.S.C. § 1051(b)). A TESS system summary of Application No. 85474170 is attached to this Petition for Cancellation as Exhibit B.

3. The certificate of registration identified in paragraph 1 is valid and subsisting and record title is in Petitioners; the certificate of registration is *prima facie* evidence of the validity of the registration, the Registrant's ownership of the mark, and of the Registrant's exclusive right to use the mark in commerce in connection with the goods and services specified in the certificate of registration under the provisions of 15 U.S.C. § 1057(b). Further, the certificate of registration constitutes constructive notice of Registrant's claim of ownership under 15 U.S.C. § 1072.

4. Upon information and belief, Respondent is the owner of U.S. Trademark Registration 4001078 for the mark WEST SIDE MIXED MARTIAL ARTS mark shown in Registration 4001078 as owned by Paul Thomas, d/b/a West Side Mixed Martial Arts, (hereafter “Respondent”) for:

Martial arts instruction; physical fitness instruction in International Class 041.

5. Upon information and belief, Respondent is an individual with an address of 13782 Hollowgreen Dr., Houston, TX 77082.

6.. Respondent was not entitled to use or register as a trademark the WEST SIDE MIXED MARTIAL ARTS mark on either June 16, 2010, the date of filing of said registration, or on July 26, 2011, the date of registration, nor is it entitled to do so today.

7. Louis J. Simmons, Petitioner, individually and acting through the entity Tee And Ell Weight Lifting And Exercise Enterprises, Inc. d/b/a/ WESTSIDE BARBELL is an internationally renowned expert in the fields of physical fitness, particularly, weightlifting and strength training.

8. Mr. Simmons is one of only six lifters in history to total Elite in five weight classes.

9. Mr. Simmons has published more than 300 training articles and students training under his direction have achieved over 100 open weightlifting world records.

10. Mr. Simmons is also the inventor of the Reverse Hyper® machine, patented in 1993; the plyo swing and the reverse leg curl machine, utilized around the world for physical fitness strength training and injury rehabilitation.

11. Mr. Simmons has authored 3 books and holds the copyrights on 16 tapes in the areas of physical fitness, particularly, weightlifting and strength training.

12. Mr. Simmons has been a strength consultant for the National Football League's Cleveland Browns, Green Bay Packers, New England Patriots, and Seattle Seahawks, as well as numerous college football teams.

13. Mr. Simmons is also a strength and fitness consultant for many amateur and professional athletes from around the world.

14. Respondent's services are closely related to the goods offered by Petitioners under their WESTSIDE BARBELL mark and registration, and are sold to the same class of purchasers, and are marketed and available for sale through the same or similar channels of trade.

15. Respondent's mark is confusingly similar to Petitioners' WESTSIDE BARBELL trademark in sound, appearance, connotation, and commercial impression, and is intended to be used on services that are closely related and competitive with the services covered by Petitioners' WESTSIDE BARBELL mark and registration.

16. Respondent's mark, namely, WEST SIDE MIXED MARTIAL ARTS, so resembles Petitioners' WESTSIDE BARBELL mark as to be likely, when applied to the services of Respondent, to cause confusion or mistake or to deceive persons by creating the erroneous impression that Respondent's goods and services originate with or come from Petitioners, or are authorized, licensed, endorsed, sponsored by, or are connected in some way with Petitioners, and therefore, the registration of Respondent's WEST SIDE MIXED MARTIAL ARTS designation is injurious to Petitioners.

17. Petitioner Louis J. Simmons has been further injured by the refusal of the United States Patent and Trademark Office to register the mark WESTSIDE 4 ATHLETES, for the goods and services of "Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living," on the basis of likelihood of confusion with Respondent's mark, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

18. Respondent knew or should have known of Petitioners' WESTSIDE BARBELL mark when it adopted the WEST SIDE MIXED MARTIAL ARTS mark.

19. Respondent's adoption and use of the WEST SIDE MIXED MARTIAL ARTS mark is without the license or permission of Petitioners.

20. Registration of the WEST SIDE MIXED MARTIAL ARTS mark by Respondent is improper by the provisions of 15 U.S.C. § 1052(d), for the reason that the mark is confusingly

similar to Petitioners' WESTSIDE BARBELL mark previously registered in the United States Patent and Trademark Office, previously used by Petitioners and not abandoned, as to be likely, when applied to the goods and services of Respondent, to cause confusion, mistake or to deceive. For the above reasons, any use of the WEST SIDE MIXED MARTIAL ARTS mark by Respondent is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the Respondent's goods and services offered under the WEST SIDE MIXED MARTIAL ARTS mark emanate from or are otherwise sponsored or endorsed by Petitioners, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

21. Additionally, Registration of the WEST SIDE MIXED MARTIAL ARTS designation by Respondent is improper by the provisions of 15 U.S.C. § 1052(e), for the reason that the mark is, upon information and belief, primarily descriptive of the geographic location of the services offered, which upon further information and belief, is the western side of the city of Houston, Texas.

22. Additionally, Registration of the WEST SIDE MIXED MARTIAL ARTS designation by Respondent is improper by the provisions of 15 U.S.C. § 1125(c), as any use of the mark WEST SIDE MIXED MARTIAL ARTS will cause dilution of Petitioners' distinctive and famous WESTSIDE BARBELL mark.

WHEREFORE, Petitioners pray that Registration Serial No. 4001078 be cancelled; and that this Cancellation Petition be sustained in Petitioners' favor. Petitioners requests such other and further relief as the Board may deem just and proper.



The fee of \$600.00 for this Opposition, as provided by 37 C.F.R. § 2.6(a)(16) is filed herewith.

Dated: March 22, 2010

Respectfully Submitted,

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s/Michael J. Gallagher/  
David J. Dawsey

GALLAGHER & DAWSEY CO., L.P.A.  
P.O. Box 785  
Columbus, OH 43216  
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Attorneys for Petitioners:  
TEE AND ELL WEIGHT LIFTING AND  
EXERCISE ENTERPRISES, INC. d/b/a/  
WESTSIDE BARBELL and  
LOUIS J. SIMMONS

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this Notice of Opposition was served by first-class mail, postage pre-paid, to Paul Thomas DBA West Side Mixed Martial Arts, 13782 Hollowgreen Drive, Houston, TX 77082 on this 22nd day of March, 2012.

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Michael J. Gallagher

# EXHIBIT A

**Int. Cl.: 9**

**Prior U.S. Cls.: 21, 23, 26, 36 and 38**

**Reg. No. 2,935,689**

**United States Patent and Trademark Office**

**Registered Mar. 29, 2005**

**TRADEMARK  
PRINCIPAL REGISTER**

**WESTSIDE BARBELL**

TEE AND ELL WEIGHT LIFTING AND EXERCISE ENTERPRISES, INC. (OHIO CORPORATION), DBA WESTSIDE BARBELL  
1417 DEMOREST ROAD  
COLUMBUS, OH 43228

FOR: PRERECORDED VIDEO TAPES FEATURING INSTRUCTION AND TRAINING IN THE FIELD OF WEIGHTLIFTING , IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-16-1992; IN COMMERCE 11-16-1992.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BARBELL", APART FROM THE MARK AS SHOWN.

SER. NO. 76-447,366, FILED 9-6-2002.

TRACY CROSS, EXAMINING ATTORNEY

# EXHIBIT B



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<b>Word Mark</b>	WESTSIDE 4 ATHLETES
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	<b>85474170</b>
<b>Filing Date</b>	November 16, 2011
<b>Current Filing Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Louis Simmons INDIVIDUAL UNITED STATES 3384 Larchmere Drive Grove City OHIO 43123
<b>Attorney of Record</b>	Michael J Gallagher, David J Dawsey
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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